1949. **File No.** O.L.R. Bom City 49

Legal Deptt

A **BRANCH**

Subject:— Opinions under the City of Bombay Land Revenue Act, 1876

19/E)

File No. O.L.R. Bom City/49

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Submitted.

The Collr. of Poona issued to the Collr. of Bombay - Revenue Recovery Certificate under the Revenue Recovery Act (I of 1890) for recovery of Rs. 13,785-0-0 from Messrs. G.M.Ferose. TheCollr. of Poona also intimated to the Collr. of Bombay that a sum of Rs. 14,313-0-0 was due to the defaulter on account of dividend on the shares held by them in the Canteen Contractors Syndicate Ltd. which was in voluntary liquidation. As the address of the defaulter was not known, the Collr. of Bombay requested the liquidators not to pay the dividend and the liquidators, it appears, agreed to consider this as attachment. There after, the Collr. ascertained the address of the defaulter and served on him a notice of demand under sec. 18 of the Bombay City Land Revenue Act and on expiry of the specified time served a prohibitory order on the liquidators, under the provisions of the Bombay Land Revenue Act.

The Liquidators are now contending that the moneys in their hands cannot be validly attached by the Collr. of Bombay They state :

> "The Company is registered at Karachi and the capital moneys available for distribution are also lying at Karachi. The situs of the shares is in Karachi and the moneys payable by way of distribution are also in Karachi. In the circumstances, we do not consider that the Collector of Bombay could validly attach either the shares or the capital distribution moneys. The attachment is to be made in accordance with the provisions of the Civil Procedure Code. We do not consider that a civil court in the Province of Bombay could have levied an attachment on either the shares of the capital distribution moneys in this case.

In view of this contention, the Collr. has requested the Solicitor in L.D. to advise in the matter and the papers have been received in this branch for noting.

It is not denied that the company owes M/s E.M.Firoze the sum of Rs. 14,618-6-0 and the short question for consideration is whether the Collr. can validly attach this sum though it is a debt payable at a place outside his jurisdiction. Analogous law regarding attachment is contained in O. 21, Rule 46 which contains rules regarding attachment of movables. Under this Rule it is not competen to a court to issue a prohibitory order upon a person resident outside the limits of its jurisdiction in respect of property which is also beyond such limits. A debt due to the judgment debtor from a non-resident foreigner in respect of which no suit could be brought by the judgment debtor in a British Indian Court, is not liable to be attached under this rule., and the general rule as to the situs of a debt is the residence of the debtor. (See Mulla's C.P.C.pp. 813-814). The company in this case is no doubt a foreign company and the debt is payable at Karachi. Ordinarily therefore a Civil Court could not have attached the property in question.

The next question that falls for consideration is whether the presence of the liquidators in Bombay would give jurisdiction to the Collr. to attach the property in their hands. According to the principles of Private International Law it appears that a curator, syndic, or assignee in a foreign bankruptcy is not accountable in the English Court merely because he is in England with funds of the Bankruptcy in his hands; nor will the English court interfere with him unless it be shown that his absence from the country of bankruptcy prevents redress being had there (see Westlake's Private International Law, Art. 136). The position, therefore, appears to be that the property in the hands of the

Contd.

Liquidators is not liable to attachment . Govt. dues, however, amount to Rs. 13,757-9-6 and perhaps M/s. Little and Co. and the Advocate General, Bombay may be consulted with a view to taking effective action for recovery.

sd/-
4/1
A.L.R.

I agree with the view taken by Mr. Rege
However Messr. Little & Co. may be consulted.

MM

SC

sd/-
R.L.A.
21/1.

UOR to M/s Little & Co. No. 859 of 24-1-1949.

Messrs. Little & Co. may be asked to consult the Advocate General immediately and suggest what course of action should be adopted to secure the money to Govt.

sd/- P.M. Tad
21/1.

3rd August, 1949.

No. AM/JJ 10897

Below U.O.R.No. 889 dated 24th January 1949 from Legal Department Government of Bombay.

Re: Recovery of assessment dues from Messrs. G.M. Feroze & Co.

We send herewith a copy of the opion given by Mr. M.P.Amin, the Acting Advocate General of Bombay in this matter.

You will observe from the enclosed copy opinion that the Advocate General is of opinion that the shares held by the defaulters Messrs. G.M.Feroze & Co. cannot be validly attached by the Collector of Bombay as the registered office of the Company is situate at Karachi which is now Pakistan territory and the situs of the shares can be regarded as being in Karachi where the shares can be effectively dealt with.

The case of accumulation of dividends due to the defaulters appears to be differenpt. If the accumulation of dividends are credited in the defaulters' account and if the Liquidators have all the books of account in Bombay, the Advocate General is of opinion that attachment would be valid; the reason is that the Liquidators or the Company as the case may be, are then deemed to be the debtors of the defaulters and residence or carrying on business being in Bombay and the books where the debt appears being in Bombay, attachment

Contd.

Bombay and the books where the debt appears being in Bombay, attachment may be levied.

Little Co.

Solicitors to Government.

MM

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OPINION

Exparte:- Thecollector of Bombay.

Re: Recovery of assessment dues from

Messrs.G.M. Feroze and Co.

ANSWERS 1 and 2 :-

The 'Situs' of shares of companies is generally at the place where the shares can be effectively dealt with. Under section 34 of the Indian Companies Act, 1913 transfer of shares in a company can be effected by an application for the registration of the transfer of shares. On the proper application being made the company shall enter in its register of members the name of the transferee shall be deemed to remain the holder of the share until the name of the transferee is entered in the registrer of members in respect thereof. Section 36 of the Indian Companies Act says that the register of members shall be kept at the registered office of the company. The evidence of title to shares is the register of members of the company and the register of members is by Section 36 of the Indian Companies Act required to be kept at the Registrered Office of the Company which in this particular case is at Karachi. The register of members of the Company is the evidence of title to the shares because by Article 18, the transferee is not the holder of shares until his name is on the register of members. It has been held in Attorney General Vs. Higgins 2 H & N 339 by Baron Martin that "the evidence of title to these shares is the register of shareholders, and that being in Scotland this property is located in Scotland." This statement of Baron

of Baron Martin was fully approved of by the Privy Council in (1925) A. C. 371 in an appeal from the Supreme Court of Canada and also in (1930) A.C. 161 in an appeal fr from Ontario.

In (1930) A.C. 161 the Privy Council held thus "In Attorney General Vs. Higgins, Baron Martin held that wh when transfer of shares in a Company must be effected by a change in the register, the place where the register is required by law to be kept determines the locality of the shares." Under the Ontario Company Act, Section 198, the Company's register of Shares and share-holders was required to be kept at the head office "within Ontario" and the Privy Council held that the shares were situtated in Ontario notwithstanding the fac fact that the business of the Company was carried on from Buffalo, in U.S.A., business including all meetings of shareholders and directors, Company's books and records were kept in Buffal The real test therefore seems to be this as stated by Privy Council in (1930) A.C. 161 :-

"Where the transfer of shares in a company must be effected by a change in the Register, the place where the Register is required by law to be kept dete determines the locality of shares."

Consistering Article 18 of Table A and Section 36 of Indian Company's Act, it seems clear that the Register of shares is required by law to be kept at Karachi at the Head Office and therefore the locality of shares is at Karachi. If this is the correct view and it seems to be correct, the fact that the Liquidator is managing the Company's affa ffairs in Bombay and according to (1892) 1 Chancery 12 at p. 448 the Liquidator is entitled to the custody

Contd.

442 at p. 448 the Liquidator is entitled to the custody of such books and documents of the Company as relate to its management and business and although without his sanction transfer of shares cannot take place, would not alter the position.

In 41 Bom. L.R. 934, Beaumont C.J. has taken the same view as the Privy Council though the Privy Council decision is not referred to. That was a case of Wakf. The Wakf property shares were of companies having their registered office in Rangoon and Bea Beaumont C.J. held that the shares were situated in Rangoon outside British India, although the Mutawal Mutavallis were residing in Surat in British India.

But the case of accumulation of dividends may perhaps be considered differently. If the accumulations of dividends are credited in an account of the C.M.Ferose and Co., the defaulters, and the Liquidators have all the Books of Account in Bombay, it would seem that the attachment would be valid. The reason is that the Liquidator or the Company, as the case may be, shall be deemed to be the debtors of the defaulters and residence or carrying on business being in Bombay and the Books where the debt appears being in Bombay, attachment may be levied.

Sd/- M.P. Amin.

Advocate General of Bombay.

30-7-1949

No. 9158

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 12th August 1949.

To

The Collector of Bombay.

Subject : Recovery of assessmen
M/s G.M.Feroze & Co.

Sir,

With reference to your letter No. LAW SR I /5737 dated 25/11/48 addressed to the Solicitor to Government, Legal Department, I have the honour to inform you that the Advocate General, Bombay was consulted in the matter & a copy of his opinion is forwarded herewith.

Yours faithfully,

P.M.Lad.

11/8

Remembrancer of Legal Affairs.

Submitted for approval
and signature.

MR

SC